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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,101	09/10/2003	John Geoffrey Chan	9040	4327
27752	7590	08/03/2005	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			CHIN, RANDALL E	
		ART UNIT		PAPER NUMBER
		1744		
DATE MAILED: 08/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/659,101	CHAN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Randall Chin	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 and 9 is/are rejected.
- 7) Claim(s) 8 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(a) as being anticipated by Brown 2003/0070259 (hereinafter Brown '259).

Brown '259 teaches a toothbrush in Figs. 1, 2, 2A and 4 comprising a "housing" formed from a first material (most likely plastic) and including a handle 12, a brush head 13, and a neck (Fig. 1) extending between said handle and said brush head, characterized in that said "housing" further includes a first gripping member 16, 24 disposed along an exterior region of said housing, said first gripping member formed from a second material 22 softer than said first material (paragraph [0026]), said first gripping member having a first recessed region (paragraph [0037]), and a second gripping member 17, 26 formed from said second material 22, said second gripping member defining a second recessed region (paragraph [0037]). As for the preamble reciting that the toothbrush is "electric," no patentable significance has been attributed to such a recitation which has been merely recited in the preamble

As for claim 2, said "housing" of said toothbrush defines a longitudinal axis, and said first and said second gripping members appear to be symmetrically disposed on said housing with respect to said longitudinal axis (Fig. 1).

As for claim 5, said second material 22 has a Shore A hardness between about 30 and about 99 (paragraph [0028]).

As for claim 6 reciting that each of said first and second gripping members is formed from a material selected from the group consisting of elastomers and rubber-based materials, Brown '259 teaches that said material can be elastomer (paragraphs [0028] to [0030]).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown '259.

As for claims 3 and 4 reciting specific dimensions for the first gripping member and for the first recessed region, such claimed values are well within the level of ordinary skill to provide for (if not already, as such claimed values appear typical) through routine optimization.

5. Claims 1, 2, 5-7 and 9 are rejected under 35 U.S.C. 102(a) as being anticipated by Stvartak 6,601,272 (hereinafter Stvartak '272).

Stvartak '272 teaches a toothbrush in Figs. 1-3 comprising a "housing" formed from a first material (plastic) and including a handle 12, a brush head 20, and a neck 80 extending between said handle and said brush head, characterized in that said "housing" further includes a first gripping member 58 (Fig. 1) disposed along an exterior region of said housing, said first gripping member formed from a second material (elastomer) softer than said first material, said first gripping member having a first recessed region (can be a depression as recited at col. 5, lines 1-8, if not already) and a second gripping member 60 (Fig. 1) formed from said second material (elastomer), said second gripping member defining a second recessed region (can be a depression as recited at col. 5, lines 1-8, if not already). As for the preamble reciting that the toothbrush is "electric," no patentable significance has been attributed to such a recitation which has been merely recited in the preamble

As for claim 2, said "housing" of said toothbrush defines a longitudinal axis, and said first and said second gripping members are symmetrically disposed on said housing with respect to said longitudinal axis (Fig. 1).

As for claim 5, said second material (elastomer) has a Shore A hardness between about 30 and about 99 (col. 5, lines 33-34).

As for claim 6 reciting that each of said first and second gripping members is formed from a material selected from the group consisting of elastomers and rubber-based materials, Stvartak '272 teaches that said material can be elastomer (col. 5, lines 17-36).

As for claim 7, said housing further includes a third gripping member (Fig. 3) disposed along an exterior region of said housing "between" (on the bottom side of the toothbrush shown in Figs. 2 and 3) said first and second gripping members.

As for claim 9, said third gripping member is formed from a material having a Shore A hardness between about 30 and about 99 (col. 5, lines 33-34).

6. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stvartak '272.

As for claims 3 and 4 reciting specific dimensions for the first gripping member and for the first recessed region, such claimed values are well within the level of ordinary skill to provide for (if not already, as such claimed values appear typical) through routine optimization.

#### ***Allowable Subject Matter***

7. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Woodnorth, Heinzelman, Beals, and Barton are relevant to various handles having elastomeric gripping portions.

9. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, John Kim, can be reached at (571) 272-1142. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
R. Chin

  
Randall Chin  
Primary Examiner  
Art Unit 1744